IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14702 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MERUNBAHEN OSMANBHAI SINDHI

Versus

THE COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 14702 of 2004

MS BANNA S DUTTA for Petitioner No. 1

MRS HB PUNANI, AGP for Respondent No.3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 08/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by Police Commissioner, Rajkot City, on 16th August, 2004, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 16th August, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials to arrive at subjective satisfaction. Firstly, the fact of filing of four criminal cases against the petitioner under the Bombay Prohibition Act and secondly two incamera statements of the witnesses whose identity is not disclosed claiming privilege under Section 9(2) of the PASA Act.

3. Four criminal cases all before Pradyumannagar Police Station, Rajkot came to be registered against the petitioner on 10th August, 2003, 28th August, 2003, 30th September, 2003 and 6th June, 2004. It was alleged that in all four cases, the petitioner was found in possession of some quantity of country liquor. The detaining authority considered exhaustively and thoroughly investigation papers in all these four cases registered against the petitioner. The detaining authority came to the conclusion that the petitioner was dealing in storing, selling and transporting prohibited country liquor.

4. Secondly, the detaining authority relied upon two incamera statements of the witnesses as recorded by the sponsoring authority on 13th August, 2004 and verified by the detaining authority on 14th August, 2004. First witness referred to an incident occurred on 15th May, 2004, on that day about 7.00 P.M., the witness was present at his business place, one of accomplices of the petitioner started selling prohibited liquor near the business place of the witness. Therefore, the witness called such accomplices and removed him from that place where he was selling illegal liquor. After half an hour, the petitioner along with his other accomplice Asif approached the witness and started abuses and bullying him, the witness was slapped by the petitioner. The witness stated to the petitioner that if the petitioner show high handedness then he would be constrained to file a complaint before the police against the petitioner. On saying so, as per the directions of the petitioner his accomplice Asif took out knife show it to the witness and threatened that if the witness dared to file a complaint

against the petitioner, he would be done to death. The witness was frightened and started shouting a crowd was gathered but non-dared to rescue the witness. On the contrary to spread terror and fear, accomplice of the petitioner Asif rushed towards the crowd with open knife, therefore, people started running helter-skelter, and atmosphere of fear was spread. Ultimately by the act of supplication, the witness could save him. The second witness referred to an incident occurred on 22nd July,2004 on that day at about 9.00 A.M., the witness was taking his rickshaw to the stand and he was at the rickshaw stand, the petitioner and his accomplice Asif approached the witness and stated that they wanted to go to village Nakrawadi for taking delivery of liquor and they would pay Rs.300/-- by way of hire charges of the rickshaw. The witness refused to give his rickshaw on hire. Therefore, the petitioner and his accomplice were got excited and started giving abuses to the petitioner and on direction of the petitioner, his accomplice Asif slapped the witness. The witness stated to the petitioner that they were behaving high handedly to innocent person like the witness and, therefore, he would go to the police station and give a complaint against the petitioner. On saying so, the accomplice Asif took out knife and show it to the witness and threaten that if the witness dared to file a complaint against him before the police, he would be done to death. The witness was frightened and started shouting for help a crowd gathered, but on account of fear of petitioner none intervene to rescue the petitioner. On the contrary, to spread fear and terror, accomplice Asif rushed towards the crowd with open knife, so on account of fear, the people started running helter-skelter and atmosphere of fear was spread. Ultimately by the act of supplication, the witness could save him.

5. From the above materials, the detaining authority came to the conclusion that the activities of the petitioner was a bootlegger within the meaning of PASA Act. The detaining authority also came to the conclusion that the petitioner was head strong person and was of ferocious tendency. The detaining authority also came to the conclusion that after forming gang of head strong person for the business of illegal liquor, the petitioner was in habit of picking up quarrels with innocent persons and, thereby the public order was disturbed. The detaining authority also came to the conclusion that the illegal activities of the petitioner were required to be prevented forthwith and, therefore, after taking other remedies available in general law against the petitioner, the detaining authority reached to the subjective

satisfaction that there was no other alternative, except to detain the petitioner as bootlegger under the PASA Act. The detaining authority, therefore, passed the order of detention against the petitioner which is under challenge in this petition.

6. Learned advocate Ms.B.S.Dutta for the petitioner and learned AGP Mrs.H.B. Punani for the respondent No.3 were heard at length. The affidavit-in-reply filed by the detaining authority has placed on record by the learned AGP, is taken into consideration.

7. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of, on the sole issue that whether there was credible material placed before the detaining authority to come to the conclusion that by the activities of the petitioner, the public order was disturbed and public health was adversely affected.

8. To reach to the subjective satisfaction that the bootlegging activities of the petitioner were prejudicial to the maintenance of public order and public health, the detaining authority must rely upon credible and cogent material clearly indicating that the activities of the detenu directly or indirectly were causing or were likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health. While undertaking this exercise, the detaining authority must discerned the cases falling within the category of breach of law and order and the cases falling within the category of breach of public order.

9. Now referring to the four cases filed against the petitioner under the Bombay Prohibition Act and taking into consideration the investigation papers as placed on record, it clearly appears that those cases came to be filed against the petitioner, because he was found in possession of some quantity of country liquor. This being a breach of provisions of Bombay Prohibition Act, the offences came to be registered against the petitioner. Those cases are pending in the Court and the petitioner is still to be tried in those cases. The investigating papers in those cases, which is a material taking into consideration by the detaining authority do not disclose anything that the possession of country liquor of the petitioner was disturbing the maintenance

of the public order. There is nothing on record that by mere breach of the provisions of the Bombay Prohibition Act by the petitioner, the society at large or section of society was so a danger that the public order was disturbed. At the most, the activities reveal from the investigation papers of these four cases may be said to be breach of law, for which the petitioner may be tried and may be punished, if found guilty. But surely the act constituting the offences cannot be said to have affected the even tempo of the life of the community. Therefore, the registration of cases against the petitioner on the ground that he was dealing in liquor have no bearing on the question of maintenance of public order.

10. It is equally necessary that when alleged activity placed before the detaining authority for scanning and forming an opinion that whether such activities were disturbing the public order, the detaining authority must consider fall out, reach and impact of the activities of the petitioner to judge whether potentiality of the activities alleged was capable of disturbing the public order. The two incidents narrated through incamera statements appears to be more individual disputes then to involve the society at large or disturbing the even tempo of the life of the community. The potentiality of the act alleged through incamera statements have even on bare reading do not disclose capability to disturb the even tempo of the life of the community or a society at large or section of the society. The phrases employed by the witnesses in the statements and by the detaining authority in reasoning about the spreading of fear and terror and about the persons running helter-skelter certainly would not stretch the activities of the petitioner to be labelled as activities disturbing the public order. On going through the incamera statements, it is clear that no widespread danger to the society could be inferred, even if the statements are taken on there face value. Therefore, on this count also the material in shape of incamera statements enable to convenience that the activities disclosed by the statements were prejudicial to the maintenance of public order. The incidents narrated may be breach of law and order and could be taken care of by ordinary law.

11. In the matter of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat & Ors., reported in 2000 (1) G.L.H. 393, wherein after considering many decisions of the Apex Court, the Division Bench of this Court has observed in paragraphs No.20 and 21 as under.

"20. The Division Bench then considered the law laid down by the Apex Court in Piyush Kantilal v. Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 and T. Devaki v. State of Tamil Nadu, AIR 1990 SC 1086. In Piyush Kantilal, similar circumstances were before the detaining authority and it was alleged that detention of the detenu was necessary in order to prevent activities of the detenu in maintenance of public order. Similarly, in T. Devaki, panic amongst people in the hall in which the incident took place and in nearby vicinity was high lighted. It was also alleged that people were scared and had run helter skelter. In spite of such allegations the Supreme Court held that they were not cases of maintenance of public order and hence, an action of preventive detention was uncalled for.

"21. The Division Bench, following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of public order and as power of detention could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances could not be upheld.

Again, in Mustakmiya Jabbarmiya Shaikh v. M.M.Mehta, Commissioner of Police and others, 1995 (2) GLR 1268 (SC), the Supreme Court considered the relevant decisions on point including the decision in Arun Ghosh v. State of West Bengal, 1979 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases."

12. The present set of facts are squarely covered by the above decision of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki [supra]. In this view of the matter, the subjective satisfaction arrived at by the detaining authority in respect of disturbance of public order by the alleged activities of the petitioner, cannot be said to be legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

13. In the result, in view of the above discussion, the petition is allowed. The order passed by the Police

Commissioner, Rajkot City on 16th August, 2004, against the petitioner in exercise of powers under Section 3(2) of the PASA Act is hereby quashed and set aside. The detenu Merunbahen Osmanbhai Sindhi is hereby ordered to be set at liberty forthwith if she is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

vijay